

SENATE BILL NO. 191

INTRODUCED BY J. ESP

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION LAW TO PROVIDE THAT A PERSON WHO HAS BEEN CERTIFIED AS AN INDEPENDENT CONTRACTOR FOR A PERIOD OF AT LEAST 10 CONSECUTIVE YEARS IS ONLY REQUIRED TO SUBMIT THE APPLICATION REQUIRED BY THE DEPARTMENT OF LABOR AND INDUSTRY AND THE RENEWAL FEE; AND AMENDING SECTION 39-71-417, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 39-71-417, MCA, is amended to read:

**"39-71-417. Independent contractor certification.** (1) (a) A person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.

(c) For the purposes of this section, "person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

(2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (a) Except as provided in subsection (5)(b), to ~~To~~ obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

1 (ii) that the applicant is engaged in an independently established trade, occupation, profession, or  
2 business and will provide sufficient documentation of that fact to the department if required.

3 (b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in  
4 37-47-303, does not imply or constitute control.

5 (5) (a) An applicant for an independent contractor exemption certificate shall submit an application under  
6 oath on a form prescribed by the department and containing the following:

7 ~~(a)~~(i) the applicant's name and address;

8 ~~(b)~~(ii) the applicant's social security number;

9 ~~(c)~~(iii) each occupation for which the applicant is seeking independent contractor certification; and

10 ~~(d)~~(iv) except as provided in subsection (5)(b), other documentation as provided by department rule to  
11 assist in determining if the applicant has an independently established business.

12 (b) An applicant for a renewal of an independent contractor exemption certificate who has been certified  
13 as an independent contractor for a period of at least 10 consecutive years is only required to submit the  
14 application provided for in subsection (5)(a) and the renewal fee.

15 (6) The department shall issue an independent contractor exemption certificate to an applicant if the  
16 department determines that an applicant meets the requirements of this section.

17 (7) (a) When the department approves an application for an independent contractor exemption certificate  
18 and the person is working under the independent contractor exemption certificate, the person's status is  
19 conclusively presumed to be that of an independent contractor.

20 (b) A person working under an approved independent contractor exemption certificate has waived all  
21 rights and benefits under the Workers' Compensation Act and is precluded from obtaining benefits unless the  
22 person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or  
23 3.

24 (c) For the purposes of the Workers' Compensation Act, a person is working under an independent  
25 contractor exemption certificate if:

26 (i) the person is performing work in the trade, business, occupation, or profession listed on the person's  
27 independent contractor exemption certificate; and

28 (ii) the hiring agent and the person holding the independent contractor exemption certificate do not have  
29 a written or an oral agreement that the independent contractor exemption certificate holder's status with respect  
30 to that hiring agent is that of an employee.

